

DO'S AND DON'TS GUIDE FOR ELECTION YEAR ACTIVITIES

Every two years, Americans go to the polls to elect the federal, state and local officials who will govern them. Because of increased citizen awareness and media attention, elections provide an important opportunity to educate the public about the needs of children and families and to advocate for child-friendly public policies. In addition, state legislatures, city councils and Congress continue to meet and take important actions throughout election years, and legislators may be more open to hearing from the public when they are running for re-election. Just because it is an election year does not mean that NAEYC and its affiliates must stop educating the public about the needs of children and families or advocating for public policies that meet these needs. This memorandum addresses a number of typical election-year activities and explains how they may be conducted within the restrictions applicable to tax exempt organizations.¹

Meetings With Legislators

NAEYC affiliates may continue to meet with legislators throughout an election year to press their legislative agendas at **legislative breakfasts** and in other settings such as **town-hall meetings**. Similarly, affiliates may continue to invite legislators to make **program visits** to observe effective programs in operation. And, affiliates may invite legislators and other public officials who are running for office to address their **annual conferences**, attend and speak at **fundraising** events, etc. Where the legislators who are

¹ For more general information on these rules, see, Alliance for Justice, The Rules of the Game. In addition, if you work for Head Start, there are special rules. For those rules, please seek the advice of the National Head Start Association.

invited are not running for re-election, these events present no legal risks to the groups. *Incumbent legislators who are up for re-election may also be invited to attend these meetings as long as the events are not used as campaign events.*

This means that incumbent legislators who are also candidates must not use affiliate-sponsored events --

- to distribute campaign literature,
- to solicit votes,
- to ask for volunteers, or
- to collect campaign contributions.

Supporters of candidates cannot take these actions on their behalf or carry signs supporting the candidate during the affiliate-sponsored event. As a general rule, NAEYC and its affiliates should not show any favoritism in whom they invite to such events. It is a good idea to invite representatives of both political parties and, if possible, to invite both legislators who are running and those who are not. Since many legislators may not be aware of the limits when they are meeting with tax-exempt groups such as NAEYC and its affiliates, it is a good idea to send them a letter before the meeting letting them know that the meeting or event cannot be used as a campaign event. *A sample letter is attached as Attachment A.*

One question that may arise is whether an NAEYC or an affiliate may present an **award** or otherwise honor a public official for his or her past service on behalf of children and families during an election year.

- If the public official has already announced that he or she is running for office, this poses a particular difficulty for the group because it may be perceived as an endorsement of the candidate. It should generally be avoided except under special circumstances, such as where the decision to make the award was made well before the official announced his or her candidacy, or the official is one of several honorees or awardees, some of whom are not candidates.

- It is also not a good idea to begin an award program for the first time in an election year if the award is being given to a candidate for office, because it may look like the award was created as a way of lending support to the candidate's campaign. If an affiliate decides to honor an official who is running for office, it should review all of its press statements very carefully to make certain that the affiliate does not suggest in its advertisements, e-mails, handouts or other materials that it is endorsing the official's re-election, and the rules described above must be followed at the event to ensure that it does not become a campaign event for the candidate.

NAEYC and its affiliates may also meet with a candidate or campaign staff **privately** to discuss the organizations' priorities and to encourage the candidates to come out in support of the organizations' positions on issues. Such pledges can be very useful after the election when the group is seeking the candidate's support for a bill or a policy position. Although a small number of members may attend such meetings, the group must be careful **not to publicize the results of the meeting to the press, to the public, or to the membership or coalition colleagues prior to the election**, since this may seem like the group is supporting or opposing the candidate.

An Exception: Candidate Forums

The rule that public officials may not use affiliate-sponsored events to campaign for office has one well-recognized exception: tax exempt organizations such as NAEYC and its affiliates may, by themselves or with other organizations, sponsor forums at which all of the candidates for a particular office or group of offices are invited. Because these are explicitly campaign-related events at which candidates may ask for support from the audience, candidate forums must be administered very carefully to ensure that the

sponsoring organizations do not convey any message of support for or opposition to any one of the candidates--

- *all* of the candidates for a particular office must be invited to participate in the same forum and be given equal opportunity to speak and answer questions;
- the questions or topics which the candidates are asked to address must not convey to the audience where the organization stands on that issue;
- the moderator should explain at the beginning and end of the forum that none of the sponsors supports or endorses any one of the candidates.

NAEYC and its affiliates may also use candidate forums sponsored by other organizations to educate the public about their issues and the candidate's positions. For example, groups may encourage the League of Women Voters or other groups who are sponsoring candidate forums to include questions about children's issues and may even suggest specific questions to be included. Also, groups may encourage their members and supporters to attend other groups' candidate forums and to ask the candidates questions relating to specific children's and family issues. **There is one caveat, however:** when NAEYC members ask questions they should be careful not to imply that NAEYC or its affiliates will favor the candidate(s) who provide the "right" answer to the question and will oppose any candidate who gives a "wrong" answer to that question. Open-ended questions, which have no obvious "right" or "wrong" answers, such as those in *Attachment B*, are therefore much better.

Working With Coalitions

NAEYC and its affiliates frequently work in formal and informal coalitions with other organizations in their communities. The question is frequently asked whether tax

exempt organizations must discontinue these activities during an election season if the coalition includes unions, political action committees, and other groups that engage in partisan campaign activities. The answer is no - as long as the coalition itself is not engaged in partisan campaign activities.

For example, an affiliate may continue to be part of a state-wide coalition that is seeking more funding for child care subsidies or that is working to educate families about the child-care tax credit even though unions and other partisan groups are part of these efforts. If a coalition of which an affiliate is a part does get involved in partisan political activities, however, it will usually not be sufficient for the affiliate to avoid participating in those activities; the affiliate will need to remove its name as a supporter of the coalition for all purposes. Also, if an affiliate contributes funds to the coalition, those funds cannot be used to support any candidate.

Candidate Questionnaires

NAEYC and its affiliates may submit questions to candidates and may publish the candidates' answers in a newsletter or other publication if both the questions and the answers are presented in a way that does not suggest to the public which candidate is favored or disfavored by the group. This means –

- all candidates for a particular office must be asked the same questions and given the same opportunity to respond;
- the candidates' answers must be published without change, except for minor editing;
- the questions themselves must not imply that there is only one “right” answer and that the group opposes any candidate that does not give this answer.

Volunteer Activity

Although affiliates may not conduct partisan campaign activities, the officers, directors, employees and members of affiliates are free to engage in such activities on their own time if they are careful not to use any organizational resources (telephones, e-mail, postage, mailing lists, etc.) in these efforts. A person's own time usually includes weekends, holidays, vacations, evenings, and unpaid lunch periods. Even though they are acting as volunteers for a candidate, officers, employees, and members generally should not distribute campaign literature at NAEYC sponsored events. They may, however, place bumper stickers on their cars and wear campaign buttons to affiliate and NAEYC events. When acting as a volunteer for a candidate or a political party, individuals should **not** identify themselves as members, officers, or employees of NAEYC or any other tax exempt organization.

Ballot Measures

Although they frequently take place at the same time and appear on the same ballot as elections for public office, efforts to influence the outcomes of referenda, initiatives and other ballot measures are *not* considered to be political campaign activity and therefore are permissible for tax exempt organizations. NAEYC and its affiliates may join and provide financial support to coalitions that are supporting or opposing ballot measures, may distribute literature supporting or opposing ballot measures, and may take people to the polls or provide other assistance to persons who want to vote on the ballot measure. *Expenditures to influence ballot measures are, however, treated as direct (not grassroots) lobbying activities by the IRS and therefore are subject to the group's lobbying limits on direct lobbying.*

Attachment A

Dear _____ :

The Maryland Association for the Education of Young Children is pleased to invite you to attend its bi-annual legislative breakfast to be held at the Marriott Hotel on February 21, 2004 from 8:00 to 10:00 am. This is our fifth year of holding this event. In past years it has been attended by more than 50 parents, child advocates and service providers who are concerned about improving the lives of low-income children and families. This year we hope to focus the discussion on [list legislative issues].

Because MAEYC is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code, we cannot support or oppose any candidate for public office and our legislative breakfast must be conducted in a strictly non-partisan manner. Public officials such as yourself who are invited to speak at the event are asked not to use it as a campaign opportunity in any manner, including asking for votes, soliciting contributions, distributing campaign literature or asking for volunteers to assist in their campaigns. These rules apply to staff and supporters as well.

We hope you will be able to attend the legislative breakfast and we look forward to a productive discussion with you concerning the needs of children and families.

Sincerely,

Attachment B

Advice on Questions You Can Ask, and Not Ask

Not allowed:

Last year, you voted against the needs of working families when you refused to support S.432, the Day-Care Improvement Act of 2003, which was supported by the AEYC and many other child advocates. Will you pledge to support similar legislation when it is reintroduced in 2004?

Governor Smith has said he wants to overhaul the current licensing standards for child care centers to make it easier for for-profit entities to enter this market. The AEYC and other organizations oppose any effort to weaken these standards. What are your views on this critical question?

If elected, will you support an increase of \$5 million in the Title XX program?

The AEYC is pushing for an increase in the T.E.A.C.H. (or other child care compensation initiative). Will you support increase funding to help raise the salaries of child care workers?

Permissible:

What are views on the needs of children in our state and what specific steps would you take to address these needs.

What kind of people will you be looking for to fill the positions of Secretary of Education, Director of the Division of Children's and Family Services, etc?

Our state currently ranks in the bottom 10% nationally in the amount we spend on day-care services for low-income residents. What are your plans for addressing this need?

What are your views on raising the compensation of child care workers?